

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Wayne R. Andersen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 7393	DATE	8/23/2002
CASE TITLE	Anthony Harper vs. Larry Massanari		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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## DOCKET ENTRY:

(1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).

(10)  [Other docket entry] Therefore, because we conclude that the time expenditures as reported are reasonable, this Court requires no further itemization. As such, we will grant Harper's motion for final judgment and attorney's fees in the amount of \$3,450.95; \$3,091.48 for the previous time expended and \$359.47 for the time spent preparing and filing recent pleadings. This is a final and appealable order. This case is terminated. It is so ordered.

(11) [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.	<p>UNITED STATES DISTRICT COURT</p> <p>LAW OFFICES OF THE CLERK</p> <p>1:51-CV-02811-ZO</p>	<p>2 number of notices</p> <p>AUG 28 2002 date docketed</p> <p><i>[Signature]</i> docketing deputy initials</p> <p>AUG 27 2002 date mailed notice</p> <p><i>[Signature]</i> mailing deputy initials</p>	Document Number
	No notices required.			
	Notices mailed by judge's staff.			
	Notified counsel by telephone.			
<input checked="" type="checkbox"/>	Docketing to mail notices.			
	Mail AO 450 form.			
	Copy to judge/magistrate judge.			
TSA	courtroom deputy's initials			

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ANTHONY HARPER, )  
v. )  
Plaintiff, ) Case No. 99 C 7393  
LARRY MASSANARI, ) District Judge  
Defendant. ) Wayne R. Andersen

**DOCKETED**

AUG 28 2002

**MEMORANDUM OPINION AND ORDER**

This case is before the Court on the motion of the plaintiff, Anthony Harper, for entry of a final judgment and for attorney's fees pursuant to the Equal Access to Justice Act. For the following reasons, the motion is granted.

**BACKGROUND**

The plaintiff, Anthony Harper, applied for Disability Insurance Benefits with the Social Security Administration on June 20, 1996 and was found to be disabled and eligible for Social Security benefits. However, he was subsequently notified that his benefits would cease effective January 1, 1997. Following Harper's appeal of this determination, his claim was denied upon reconsideration on October 30, 1996. Harper then filed a timely request for hearing on November 4, 1996, after which, on February 26, 1998, Administrative Law Judge Richard Pearson issued a decision unfavorable to Harper. Upon Harper's appeal of the Administrative Law Judge's ruling, the Social Security Administration's Appeals Council determined there was no basis for reviewing the decision, and Harper subsequently filed a civil action in this Court

challenging the administrative ruling. On July 14, 2000, we remanded the case to the Social Security Commissioner, and, pursuant to our order, the Appeals Council remanded the case to the Administrative Law Judge for further proceedings. A hearing was held on March 14, 2001. Shortly thereafter, on March 30, 2001, Administrative Law Judge Bonny Barezky issued a decision favorable to Harper. In her ruling, she stated that Harper was entitled to Disability Insurance Benefits, pursuant to Section 216(i) and 223 of the Social Security Act, beginning January 1, 1997. On June 29, 2001, Harper filed this motion for entry of a final judgment and for attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

## **DISCUSSION**

The Equal Access to Justice Act ("EAJA") allows a prevailing party to collect "reasonable fees," including attorney's fees, in a suit filed against the United States. 28 U.S.C. § 2412(b). To establish that he is entitled to recover attorney's fees, the plaintiff must first show that he is a "prevailing party." 28 U.S.C. § 2412(d)(1)(a). Upon a showing that the plaintiff is a prevailing party under the EAJA, the Social Security Commissioner may avoid paying attorney's fees by demonstrating that the agency's position was substantially justified or that special circumstances make the award of attorney's fees unjust. *Id.*

The defendant, Social Security Commissioner Massanari, does not challenge the legitimacy of the actual service performed by Harper's attorney or that the attorney should be paid. In addition, based on the briefs submitted in this case, the defendant apparently concedes that the government's posture with respect to Harper's right to Social Security Benefits was "substantially unjustified." Nevertheless, the defendant argues that, provided Harper can submit Administrative Law Judge Barezky's favorable decision, the fee amount is too high because

Harper's attorney used fifteen (15) minute billing increments to record his time. Rather, the defendant asserts that Harper's attorney should have used one-tenth hour increments, as opposed to quarter hour intervals, to track his time. Consequently, Massanari argues that Harper's attorney's billing of 14 hours (56 entries at .25/entry) should be reduced to a total billing time of 5.6 hours (56 entries at .1/entry). This would reduce Harper's attorney's final award from \$3,091.48 to \$1,883.65, a difference of \$1,207.84.

On the other hand, the plaintiff contends that the quarter hour increments were appropriate, and, based on his "prevailing party" status, his attorney should be entitled to recover the full amount of fees. Harper's "prevailing party" status was established on August 6, 2002 when his attorney presented Administrative Law Judge Barezky' March 2001 favorable decision to the defendant. Further, Harper asserts that his attorney's method of billing by 15 minute increments followed the billing recommendations suggested by the Social Security Commissioner in POMS § GN 03930.020 Section B(3). Similarly, the Social Security Commissioner has stated in the past that one-quarter hour increments are allowable if reasonable applied. *See Wonders v. Shalala*, 822 F. Supp. 1345, 1349 (E.D. Wis. 1993).

We agree with Harper that his attorney conducted an adequate investigation of the facts and he expended an appropriate amount of time and resources prosecuting this case. These efforts are accurately reflected in the time entries submitted by Harper's attorney. This evidence, combined with Harper's attorney's substantial experience dealing with similar Social Security claims, proves that his attorney's efforts in this case have been reasonable and, accordingly, should be compensated for as required by the EAJA

## CONCLUSION

Therefore, because we conclude that the time expenditures as reported are reasonable, this Court requires no further itemization. As such, we will grant Harper's motion for final judgment and attorney's fees in the amount of \$3,450.95; \$3,091.48 for the previous time expended and \$359.47 for the time spent preparing and filing recent pleadings. This is a final and appealable order. This case is terminated.

It is so ordered.



\_\_\_\_\_  
Wayne R. Andersen  
United States District Court

Dated: August 23, 2002